

Appl. No. 10/751,362
Docket No. AA611
Amdt. dated February 3, 2009
Reply to Office Action mailed on October 3, 2008
Customer No. 27752

REMARKS

Claim Status

Before entry of this Amendment, claims 1-9, 11, and 22-32 were pending in the present application, with claims 25-29 being withdrawn from consideration. Claims 2-8 and 31 are cancelled herein. Thus, subsequent to entry of this Amendment, claims 1, 9, 11, 22-30, and 32 will be pending. No additional claims fee is believed to be due.

Independent claims 1 and 30 are amended herein to incorporate the limitations of dependent claim 3. Claim 9 is amended herein to depend directly from amended claim 1. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejections Under 35 U.S.C. § 103 over Pargass in view of Yeo

In the Office Action, claims 1-9, 11, 22-24, and 30-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,558,499 issued to Pargass et al. (hereinafter “Pargass”) in view of U.S. Patent No. 5,503,076 issued to Yeo et al. (hereinafter “Yeo”). It is respectfully submitted that the Office Action has not established a prima facie case of obviousness, because the cited combination of Pargass and Yeo does not teach or suggest all the claim limitations recited in amended independent claims 1 and 30. (See MPEP § 2143). Further, it would not be obvious to modify Pargass to include such claim limitations.

As discussed above, independent claims 1 and 30 are amended herein to recite the limitations of formerly pending dependent claim 3. More particularly, claims 1 and 30 are amended to recite that the predetermined association includes a common theme and the n absorbent articles are stacked in the package in a randomly selected order. It is respectfully submitted that the cited combination of Pargass and Yeo does not teach or suggest the claimed randomly selected order of stacking absorbent articles in a package.

With regard to the limitations of formerly pending dependent claim 3, the Office Action merely asserted that a patentable distinction does not exist between the prior art

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diapers and the instant claimed diapers because any difference is nonfunctional printed matter. (See Office Action, Page 4). However, the Office Action's assertion does not address the claimed package of absorbent articles stacked in a randomly selected order in light of the teachings of Pargass and Yeo. As discussed above, Pargass and Yeo do not teach or suggest the claimed limitation.

In addition, Pargass teaches away from the claimed randomly selected order. The prior art must be considered in its entirety, including disclosures that teach away from the claimed invention, and a proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference. (See MPEP 2145X.D.) Here, the Office Action has not considered Pargass in its entirety, and in particular, portions of Pargass that teach away from the claimed limitation. Specifically, instead of disclosing randomly ordered absorbent articles in packages, Pargass teaches articles with distinct repeating graphics in packages. (emphasis added). (See Col. 5, ll. 2-6; and Col. 15, ll. 58-63).

Thus, it is respectfully submitted that, for at least the reasons discussed above, claims 1 and 30 are patentable under 35 U.S.C. § 103(a) over the cited references. Claims 9, 11, and 22 and claims 23, 24, and 32 depend from and include all the limitations of claims 1 and 30, respectively. As such, for at least the same reasons discussed above with reference to claims 1 and 30, claims 9, 11, 22-24, and 32 are also patentable under 35 U.S.C. § 103(a) over the cited references. Claims 2-8 and 31 are cancelled herein, rendering the rejections of claims 2-8 and 31 moot.

Therefore, it is believed that claims 1, 9, 11, 22-24, 30, and 32 are in form for allowance and such indication is respectfully requested.

Rejections Under 35 U.S.C. § 103 over Pargass in view of Yeo and Stavrulov

In the Office Action, dependent claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Pargass in view of Yeo and PCT Publication No. WO 00/13632 in the name of Stavrulov. Claim 4 is cancelled herein, rendering the rejection of claim 4 moot.

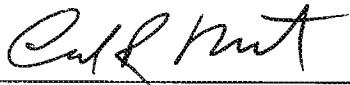
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Conclusion

In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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